

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON

OIRE OREGON C, LLC.,

Plaintiff,

CV-08-724-ST

v.

FINDINGS AND  
RECOMMENDATION

MAZIN K. YALDO, M.D., and ALEX PUJARI,

Defendants.

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STEWART, Magistrate Judge:

Plaintiff filed this breach of contract claim on June 13, 2008, to recover damages arising from the breach of a commercial lease and guaranty. On August 18, 2008, this court granted plaintiff's motion for entry of default against both defendants (docket #9) based on their failure to timely file a response to the Complaint. Four days later on August 22, 2008, defendant Mazin K. Yaldo, M.D. ("Dr. Yaldo") filed an Answer (docket #11) and Affirmative Defenses (docket #12).

Plaintiff then filed motions to strike Dr. Yaldo's Answer and Affirmative Defenses as untimely (docket #13) and for entry of a default judgment against both defendants (docket #15). On September 25, 2008, this court issued its Findings and Recommendations that both motions should be granted (docket #20). However, it also recommended that if either defendant filed a motion to set aside the default order pursuant to FRCP 55(c), then entry of a default judgment should be deferred pending a ruling on that motion.

Not surprisingly, on October 6, 2008, Dr. Yaldo filed a Motion to Set Aside Default Judgment (docket #22), which this court has construed as a motion to set aside the entry of default (docket #25). Plaintiff urges the court to deny that motion.

For the reasons set forth in plaintiff's response, Dr. Yaldo has failed to establish the "good cause" required under FRCDP 55(c) to set aside the entry of default. However, it is clear that Dr. Yaldo challenges the amount of damages that plaintiff is entitled to receive based on its alleged duty to mitigate. Even though Dr. Yaldo is in default, he is still entitled to be heard on the amount of damages. Therefore, Dr. Yaldo should be provided the opportunity to appear at a hearing on the issue of damages to be entered through a default judgment.

### **RECOMMENDATION**

Defendant, Mazin K. Yaldo, M.D.'s Motion to Set Aside Default Judgment (docket #22), construed as a motion to set aside the entry of default, should be DENIED. However, defendant should be allowed to appear at a hearing on the issue of damages prior to entry of a default judgment.

The Clerk is directed to mail a copy of these Findings and Recommendation to defendant Mazin K. Yaldo, M.D.

**SCHEDULING ORDER**

Objections to these Findings and Recommendation, if any, are due November 17, 2008.

If no objections are filed, then the Findings and Recommendation will be referred to a district judge and go under advisement on that date.

If objections are filed, then a response is due within 10 days after being served with a copy of the objections. When the response is due or filed, whichever date is earlier, the Findings and Recommendation will be referred to a district judge and go under advisement.

DATED this 24<sup>th</sup> day of October, 2008.

/s/ Janice M. Stewart\_\_\_\_\_  
Janice M. Stewart  
United States Magistrate Judge